# UNITED STATES PATENT AND TRADEMARK OFFICE

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/711,660 | 11/13/2000 | Paul F. Klein | 30695.19-US-U1 | 7885 |

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| EXAMINER |
|---|
| LEE, PHILIP C |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2154 | |

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

| Office Action Summary | Application No. 09/711,660 | Applicant(s) KLEIN, PAUL F. | |
|---|---|---|---|
| | Examiner Philip C Lee | Art Unit 2154 | |

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☐ Responsive to communication(s) filed on *22 June 2001*.
2a)☐ This action is **FINAL**.     2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-48* is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☒ Claim(s) *1-11,17,18,24,30,31,36,42 and 43* is/are allowed.
6)☒ Claim(s) *12-16,19-23,25-29,32-35,37-41 and 44-48* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *2*.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

## DETAILED ACTION

1.      Claims 1-48 are presented for examination.

2.      It is noted that although the present application does contain line numbers in the specification and claims, the line numbers in the claims do not correspond to the preferred format. The preferred format is to number each line of every claim, with each claim beginning with line 1. For ease of reference by both the Examiner and Applicant all future correspondence should include the recommended line numbering.

3.      Claims 1-11, 17-18, 24, 30-31, 36 and 42-43 are allowed.

4.      The following is an examiner's statement of reasons for allowance: As per claims 1-11, 24 and 36, none of the prior art of records teach or suggest in combination a method of determining response times of computing segments in a client-server computer environment comprising:

    determining a client segment compute time by:

        obtaining, at a client, an outbound time between an activation of a first client event and a detection of an outbound message outbound to a network;

        obtaining, at the client, an inbound time between a detection of an inbound result from the network and an arrival of the inbound result on a message queue;

obtaining, the client segment compute time by adding the outbound time and the

inbound time.

5.      As per claims 17-18, 30-31 and 42-43, none of the prior art of records teach or suggest in

combination a method wherein the network segment response time is a derived time that is

interpolated by dividing the trivial request packet size by the network packet size and

multiplying by the trivial request response time.

*Claim Rejections – 35 USC 102*

6.      The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United
States before the invention thereof by the applicant for patent, or on an international application by another who
has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention
thereof by the applicant for patent.

7.      The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999

(AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002

do not apply when the reference is a U.S. patent resulting directly or indirectly from an

international application filed before November 29, 2000. Therefore, the prior art date of the

reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA

35 U.S.C. 102(e)).

8.      Claims 21, 23, 35, 46 and 48 are rejected under 35 U.S.C. 102(e) as being anticipated by

Wang, U.S. Patent 6,446,028 (hereinafter Wang).

9.      As per claims 21 and 46, Wang taught the invention as claimed for determining a server

segment response time by subtracting the network segment response time and the client segment

compute time from a total response time (col. 2, lines 26-29).

10.     As per claims 23 and 48, Wang taught the invention as claimed for determining a think

time segment response time based on the difference between a time of the arrival of the inbound

result on the message queue and the activation of a second client event (col. 6, lines 54-57).

11.     As per claim 35, Wang taught the invention as claimed for determining a think time

segment response time comprising:

    a client (col. 3, lines 20-25); and

    a total response time agent of the client configured to determine a difference between a

time of the arrival of the inbound result on the message queue and the activation of a second

client event at the client (col. 6, lines 54-57).

*Claim Rejections – 35 USC 103*

12.    The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

13.    Claims 22, 34 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Wang in view of Dunn et al, U.S. Patent 6,560,648 (hereinafter Dunn).

14.    As per claims 22 and 47, Wang taught the invention as claimed in claims 21 and 46

above.  Wang did not teach specifically detailing the total response time.  Dunn taught wherein

the total response time comprises the time between the activation of an event and the arrival of

the inbound result on the message queue (col. 1, lines 42-46).

15.    It would have been obvious to one having ordinary skill in the art at the time of the

invention was made to combine the teachings of Wang and Dunn because Dunn's method of

measuring the total response time would increase the accuracy of the measured response time in

Wang's system by providing an application-to-application response time measurement instead of a host-to-host response time measurement (col. 1, lines 57-61).

16.    As per claim 34, Wang taught the invention as claimed for determining a server segment response time by subtracting the network segment response time and the client segment compute time from a total response time (col. 2, lines 26-29).

17.    Wang did not teach specifically detailing the total response time. Dunn taught wherein the total response time comprises the time between the activation of an event and the arrival of the inbound result on the message queue (col. 1, lines 42-46).

18.    It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Wang and Dunn because Dunn's method of measuring the total response time would increase the accuracy of the measured response time in Wang's system by providing an application-to-application response time measurement instead of a host-to-host response time measurement (col. 1, lines 57-61).

19.    Claims 12-13, 16, 19-20, 25-26, 29, 32-33, 37-38, 41 and 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Midorikawa et al, U.S. Patent 5,953,708 (hereinafter Midorikawa) in view of Dunn.

20.     As per claims 12, 25, 37, Midorikawa taught the invention as claimed for determining

network segment response times comprising:

>       obtaining a total trivial time for a packet between a time prior to sending a trivial
>
>       request packet from the client to a server to a time after the response is received at
>
>       the client from the server (col. 8, lines 57-65);
>
>       obtaining the network segment trivial response time by dividing the total trivial
>
>       request time by two (col. 13, lines 14-18).

21.     Midorikawa did not teach matching a network packet with a trivial request packet based

on the size of the network packet and a size of the trivial request packet.  Dunn taught the

invention comprising:

>       determining a network segment response time by matching a network packet with a
>
>       trivial request packet based on a size of the network packet and a size of the trivial
>
>       request packet, wherein the network segment response time is based on the network
>
>       segment trivial response time corresponding to the matched trivial request packet (col. 7,
>
>       lines 49-59).

22.     It would have been obvious to one having ordinary skill in the art at the time of the

invention was made to combine the teachings of Midorikawa and Dunn because Dunn's teaching

of setting the packet size would increase the accuracy of the measured response time in

Midorikawa's system by providing ping command with packet size relevant to the specific

application requirements (col. 7, lines 54-59).

23.    As per claims 13, 26 and 38, Midorikawa and Dunn taught the invention substantially as

claimed in claims 12, 25 and 37 above. Dunn further taught comprising averaging multiple

network segment trivial response times (col. 10, lines 8-28).


24.    As per claims 16, 29 and 41, Midorikawa and Dunn taught the invention substantially as

claimed in claims 12, 25 and 37 above. Dunn further taught wherein the packets are matched by

determining the trivial request packet size that most closely matches the network packet size

(col. 7, lines 49-59).


25.    As per claims 19, 32 and 44, Midorikawa and Dunn taught the invention as substantially

claimed in claims 12, 25 and 37 above. Dunn further taught wherein the matched packets were

transmitted at approximately the same moment in time (col. 9, lines 55-col. 10, lines 3).


26.    As per claims 20, 33 and 45, Midorikawa and Dunn taught the invention substantially as

claimed in claims 12, 25 and 37 above. Dunn further taught wherein a trivial request is

transmitted at regular intervals based on a number of packets that are transmitted (col. 10, lines

39-43; col. 7, lines 49-54).


27.    Claims 14-15, 27-28 and 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Midorikawa and Dunn in view of Knauerhase et al, U.S. Patent 6,215,774 (hereinafter

Knauerhase).

28.     As per claims 14, 27 and 39, Midorikawa and Dunn taught the invention substantially as
claimed in claims 13, 26 and 38 above. Midorikawa and Dunn did not specifically detailing the
averages are based on a packet size.  Knauerhase taught wherein averages are based on a packet
size (col. 3, lines 28-36).

29.     It would have been obvious to one having ordinary skill in the art at the time of the
invention was made to combine the teachings of Midorikawa, Dunn and Knauerhase because
Knauerhase's method of the average based on the packet size would increase the accuracy of the
measured response time in Midorikawa's and Dunn's systems by providing a measurement based
on the packet size relevant to the specific application requirements.

30.     As per claims 15, 28 and 40, Midorikawa and Dunn taught the invention as claimed in
claims 12, 25 and 37 above.  Midorikawa and Dunn did not specifically detailing matching
packets and average to determine the network segment response time.  Knauerhase taught
wherein two or more packets are matched and averaged to determine the network segment
response time (col. 3, lines 49-36).

31.     It would have been obvious to one having ordinary skill in the art at the time of the
invention was made to combine the teachings of Midorikawa, Dunn and Knauerhase because
Knauerhase's method of the average based on the packet size would increase the accuracy of the
measured response time in Midorikawa's and Dunn's systems by providing a measurement based
on the packet size relevant to the specific application requirements.

## CONCLUSION

32.     The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure.

Merriam, U.S. Patent 6,587,878, disclosed a system for determining the think time

segment response time.

33.     A shortened statutory period for reply to this Office action is set to expire THREE

MONTHS from the mailing date of this action.

34.     Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Philip C Lee whose telephone number is (703)305-7721. The

examiner can normally be reached on 8 AM TO 5:30 PM Monday to Thursday and every other

Friday.

35.    If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John Follansbee can be reached on (703)305-8498. The fax phone number for the

organization where this application or proceeding is assigned is (703)872-9306.


36.    Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is (703)350-6121.

P.L.
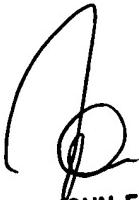
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